

APPEAL NO. 021055
FILED JUNE 17, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing (CCH) held on March 29, 2002, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, and that the respondent (carrier) is relieved of liability for the claimed injury of _____, because the claimant, without good cause or other legal excuse, failed to give his employer timely notice of the claimed injury. The claimant has filed an appeal of these determinations on evidentiary sufficiency grounds. The claimant also voices certain complaints regarding the bias of the benefit review officer (BRO), the carrier's failure to answer certain interrogatories, and the carrier's submission of a Brief of Relevant Law. The claimant has also filed a request that the Appeals Panel consider a Work Status Report (TWCC-73), which he did not offer below. The carrier has filed a response contending that the evidence is sufficient to support the challenged factual findings relating to the two disputed issues. The carrier also discusses the additional complaints and asserts that the claimant has failed to show abuse of discretion or reversible error on the part of the hearing officer.

DECISION

Affirmed.

The claimant testified that on _____, he sustained work-related sprain/strain injuries to his lumbar, thoracic, and cervical spinal regions; received some treatment for his low back injury; and was taken off work by his doctor. Apparently, these injuries were the subject of another CCH, which immediately preceded this hearing. The claimant further testified that he returned to work on September 20, 2001, for light duty; that he was assigned the task of filing papers in folders (while seated at a desk); that the "bending, stooping and twisting" he had to do to perform this task, on _____, aggravated his prior sprain/strain injury and constituted a new, specific, sprain/strain injury; and that he reported this injury to his immediate supervisor on September 21 and 25, 2001. The claimant's supervisor and the employer's human resources manager both testified and presented evidence in substantial conflict with the claimant's testimony concerning the sustaining of a new injury and its timely reporting to the employer.

The claimant had the burden to prove by a preponderance of the evidence that he sustained the claimed new injury and that he timely reported the injury pursuant to Section 409.001. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), which were abundant in this case. We are satisfied that the challenged factual findings are not so against the great weight and preponderance of the evidence as to be clearly wrong or

manifestly unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). We have considered the additional complaints asserted by the claimant, and the carrier's response thereto, and are satisfied that none of these matters constitute reversible error. Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ). Finally, we decline to consider the TWCC-73 offered for the first time on appeal. See Texas Workers' Compensation Commission Appeal No. 93536, decided August 12, 1993.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **NATIONAL FIRE INSURANCE COMPANY OF HARTFORD** and the name and address of its registered agent for service of process is

**C T CORPORATION SYSTEM
350 NORTH ST. PAUL
DALLAS, TEXAS 75201.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Michael B. McShane
Appeals Judge